[redacted]

In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 448

GEORGE LARIS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner was found guilty by a jury in the United States District Court for the Western District of Pennsylvania of transporting stolen property in interstate commerce in violation of 18 U.S.C. 2314. A motion for a new trial—based on the same grounds presented in his petition for a writ of certiorari—was denied on May 16, 1967. On June 26, 1968, the court below affirmed the order denying the motion for a new trial (Pet. App. B), and, on July 29, 1968, de-

nied a petition for rehearing (Pet. App. D). As of the present time, no judgment has been entered on the conviction, and no sentence has been imposed.[1]

In our view, the order of the district court denying the motion for a new trial was non-appealable under the provisions of 28 U.S.C. 1291. That motion raised issues which are not independent of the judgment, and which might be properly considered upon a direct appeal from the judgment of conviction when entered.[2] See, *e.g.*, *Wheeler* v. *United States*, 159 U.S. 523, 524; *Moore* v. *United States*, 150 U.S. 57, 61-62; *United States* v. *Bertone*, 249 F.2d 156, 161 (C.A. 3). In these circumstances, it would appear that this Court is without jurisdiction to grant further review. See, *e.g.*, *Good Shot* v. *United States*, 179 U.S. 87, 88. There is thus no occasion for us to respond on the merits. Of course, once a judgment is entered by the district court (see note 1, *supra*), petitioner can then

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[1] It is our understanding that petitioner has been and is presently residing, at liberty, in Florida, and has been in ill health. The United States Attorney has informed us that the district judge has indicated to him that he intends to sentence petitioner in the near future.

[2] Although the government did not assert below that the court of appeals lacked jurisdiction, this matter has now come to our attention and, in our view, it is incumbent upon us so to advise this Court. While the court of appeals might possibly have been misled, its *per curiam* opinion noted that the appeal was "from an order of the district court denying the motion of [petitioner] for a new trial" (Pet. App. 10). And, though the court below indicated that it had "carefully considered all of [petitioner's] contentions," it simply affirmed the district court's *order*, there being no judgment to uphold (Pet. App. 11).

appeal his conviction to the court of appeals, should he choose to do so.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

ERWIN N. GRISWOLD,
Solicitor General.

SEPTEMBER 1968.

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